

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

OPENWAVE SYSTEMS INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 11-765-RGA
	:	
APPLE INC., et al.,	:	
	:	
Defendants.	:	

**MEMORANDUM**

I have before me the “Stipulation and Order Regarding Judgment of Noninfringement for all Accused Products under the Court’s Claim Construction Order.” (D.I. 101).

I originally was told that if I construed the disputed claim terms a certain way, Plaintiff would stipulate to a judgment of non-infringement so that it could appeal the claim construction. Thereafter, I construed the disputed claim terms that way. Plaintiff would not stipulate to non-infringement, and I was presented with summary judgment briefing. I explained why I could not grant summary judgment on the record before me. (D.I. 100). While I continued to think the claim construction was right, I was not sure how it would apply to the facts presented in the summary judgment briefing.

I now have the judgment of non-infringement that I expected to get earlier. I am going to sign it, but I do so being somewhat uncertain as to whether the Federal Circuit will think that the record is sufficient to decide the issue of claim construction. I think the parties probably have similar thoughts. (*See* D.I. 101 ¶8). I do note that the parties agree that a Federal Circuit decision at this stage would be the most efficient way to proceed. (*Id.*). I think they are right on

that point. Further, I think, in this case, it is appropriate for me to defer to their judgment as to the best way to proceed.

October 2, 2014

  
United States District Judge